

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMBER WOODS,

Plaintiff,

vs.

No. 1:20-cv-00529-PJK-LF

BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY
OF BERNALILLO o/b/o BERNALILLO
COUNTY HOUSING DEPARTMENT,
and BETTY VALDEZ, in her
representative capacity,

Defendants.

ORDER GRANTING MOTION TO DISMISS

THIS MATTER comes on for consideration of Defendant Betty Valdez's Motion to Dismiss filed June 9, 2020. ECF No. 9. For the reasons discussed below, the motion is well taken and should be granted insofar as dismissing the claims against Defendant Valdez.

In this civil rights action under 42 U.S.C. § 1983, Plaintiff Amber Woods claims that Ms. Valdez and others deprived her of due process when terminating her housing benefits under the Section 8 program. Ms. Valdez is the Housing Director for Defendant Bernalillo County Housing Department (BCHD), which administers the Section 8 program. ECF No. 1, Exh. A at 1–2. Ms. Woods attempts to bring claims against Ms.

Valdez “in her representative capacity.” Id.

In response to the motion to dismiss, Ms. Woods clarified that she brought her claim against Ms. Valdez in her “representative (official) capacity.” ECF No. 16. She offered to stipulate to a dismissal of Ms. Valdez without prejudice, and indicated that she would seek leave to amend the complaint if the court found that it failed to withstand scrutiny under the federal pleading standard set forth in Ashcroft v. Iqbal, 556 U.S. 662 (2009), and Bell Atlantic Corp v. Twombly, 550 U.S. 554 (2007). ECF No. 16. Ms. Valdez declined to stipulate to a dismissal without prejudice and continues to urge the court to dismiss claims against her pursuant to Rule 12(b)(6). ECF No. 31.

The court will grant the motion and dismiss claims that run against Ms. Valdez in her official capacity as Housing Director for BCHD. These claims are no different than claims against the county itself. Kentucky v. Graham, 473 U.S. 159, 166 (1985) (“[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity . . . of which an officer is an agent.”). The BCHD and the Board of County Commissioners of the County of Bernalillo are already named defendants in this action. Ms. Woods appears to concede that she cannot sustain an official-capacity claim for damages against Ms. Valdez, and her offer to dismiss Ms. Valdez is a tacit admission that her claim for injunctive relief is properly directed at the county defendants. ECF No. 16 at 2–3.

Ms. Woods states that if the court finds her complaint deficient under the federal

pleading standard, she will seek leave to amend. The federal rules direct that courts should “freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). But Ms. Woods’s mere suggestion that she be allowed to amend if the court concludes her pleadings are infirm is insufficient. Garman v. Campbell Cty. Sch. Dist. No. 1, 630 F.3d 977, 988 (10th Cir. 2010). Moreover, Ms. Woods fails to let the court know “just how [she] intend[s] to fix [her] complaint.” Warnick v. Cooley, 895 F.3d 746, 755 (10th Cir. 2018).

Ms. Woods does not explain what amendments she intends to make or how they would remedy the deficiencies in her claims against Ms. Valdez. Cf. D.N.M. LR-Civ. 15.1 (“A proposed amendment to a pleading must accompany the motion to amend.”). As noted, Ms. Woods’s request for injunctive relief properly runs against the county defendants. Nothing in the pleadings suggests “personal involvement” by Ms. Valdez in alleged constitutional violations, which would be necessary to support an individual capacity claim for damages against her under either an individual participation or supervisory liability theory. See Gallagher v. Shelton, 587 F.3d 1063, 1069 (10th Cir. 2009).

NOW, THEREFORE, IT IS ORDERED that Defendant Betty Valdez’s Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted filed June 9, 2020 (ECF No. 9), is granted insofar as dismissing the claims against Defendant Valdez.

DATED this 22nd day of July 2020, at Santa Fe, New Mexico.

Paul Kelly, Jr.
United States Circuit Judge
Sitting by Designation